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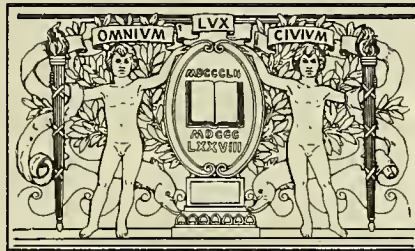
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THE FINANCE COMMISSION
OF
THE CITY OF BOSTON

Three Center Plaza
Boston, Mass. 02108

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Russell S. Codman, Jr.
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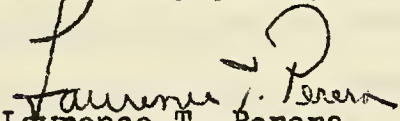
July 8, 1971

Honorable Kevin H. White
Mayor of Boston
New City Hall
Boston

Dear Mayor White:

The attached statement on the subject of Cable Television (CATV) was submitted on June 25, 1971 to the Committee on Ordinances and Resolutions of the City Council which was considering a proposed ordinance relating to this subject.

Very truly yours,


Lawrence T. Perera,
CHAIRMAN.

July 8, 1971

Honorable Kevin E. White
Mayor of Boston
New City Hall
Boston

Dear Mayor White:

The attached statement on the subject of Cable Television (CATV) was submitted on June 25, 1971 to the Committee on Urban and Suburban Development of the City Council which was considering a proposed ordinance relating to this subject.

Very truly yours,
Lawrence J. Lawrence
CHAIRMAN

CITY OF BOSTON



FINANCE COMMISSION

~~RECEIVED~~

BOSTON, MASS. 02108

LA FAYETTE 3-1622

THREE CENTER PLAZA, RM. 820

July 8, 1971

To the Honorable the Mayor:

The Boston City Council is currently considering adoption of a Boston Cable Television Systems Franchise Ordinance to regulate the operation of cable television in the City of Boston.

The original proposed ordinance was compiled in 1969 and in order to arrive at a more realistic and complete approach, several hearings were held on cable television. On April 6, 1971, a group known as Foundation 70 - a non-profit special projects group working under the auspices of the Educational Development Center in Newton, Massachusetts - presented their report to the City Council. They would divide the City into 15 cable television communities which would be part of 3 cable television districts, based upon a 1965 census study. This plan was developed upon an analysis as to compatibility mix determined on the basis of construction costs and population density.



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On April 14, 1971, another hearing was held before the Boston City Council. At this hearing a Mr. Edward J. Roth, Consultant to the Corporation for Public Broadcasting and National Education, and an acknowledged authority on cable television, made several recommendations. Some of the recommendations made were:

1. That 20% of all channels be reserved for educational or informative programs.
2. Write a flexible ordinance.
3. Licenses be given for a minimum of 7 years.
4. Set up a board representative of the community and be empowered to review operations every two years.
5. City not attempt to operate the system or direct its programming.

Consequently, a revised proposed ordinance was drawn up with Mr. Roth as Consultant. This revised proposed ordinance was heard before the City Council Committee on May 27 and 28, 1971.

Cable television is a dramatic communications technique which not only offers the potential of an enormous increase in television diversity but also educational and other public benefits which are not presently offered by the television industry. The dramatic aspects and potentials of cable television in large part, however, create a dilemma for cities and towns, like Boston, that are considering on what basis to permit the introduction of cable television into the homes of persons residing within their municipalities. The dilemma of local government results from the lack of any coherent and comprehensive Federal policy so far as cable television is concerned and, in Massachusetts at least, a total lack of a systematic State approach to the subject. The lack of any Federal or State regulatory system is not entirely an accident. On the one hand, the Federal Communications Commission has spent most of its time and

effort in developing and protecting U.H.F. television broadcasting and, so far at least, has acknowledged cable television only in terms of the competitive threat it raises to the existing television industry. When one considers that at present cable television consists primarily of receiving television signals from great distances and carrying them directly from a primary antenna source to subscribers' homes by a cable system consisting of a coaxial trunk line and drop-off wires, it is easy to understand the F.C.C.'s concern for the television stations and networks that produce those signals in the first instance. Thus, the only positive steps that have been taken so far by the Federal Government relate to the protection of television broadcasters from unreasonable use of their signals by cable television operators and under rules adopted in the mid-1960's, the F.C.C. has forbidden the importation of distant signals into the largest national television markets (known as "major markets") and it is known that they are currently considering a royalty payment system whereby cable television will have to reimburse networks for the use of their signals. Except to this limited extent, the cable television industry has been left free to develop its business within localities subject only to whatever state and local regulation may exist. While it is naive to suppose that the cable television industry is not aware of the public interest, it is fair to say that the industry is anxious to be allowed to operate with as little regulation as possible. They have been able to "play off" Federal and State authorities by telling the one that the other level of government is really the appropriate regulatory body. So far as their approach to the municipalities is concerned, in general, the industry has taken the approach that they

would rather deal with the cities and towns directly than to face a general pattern of regulation at either the State or the Federal levels. They have been successful so far in achieving this goal in the Commonwealth of Massachusetts. Consequently, the cities and towns in this State are pressured to develop a regulatory system of their own or permit cable television to exist without any State or local regulation, whatsoever. On this basis, it is completely understandable why the City of Boston is taking steps to develop a sensible regulatory ordinance and the City Council quite correctly has sought professional consultants for this purpose. There are some serious questions, however, that we think must be examined closely before the City Council should proceed to adopt any cable television ordinance and, subsequently, grant franchises pursuant to that ordinance. First and foremost, in our opinion, is the question whether the City of Boston has any jurisdiction to establish a valid regulatory system under the Constitution and Laws of the Commonwealth. It is simply not clear whether municipalities in Massachusetts have the power to grant operating franchises pursuant to G.L. c. 166, ss. 21 and 25 or any other provision of the Massachusetts General Laws or Constitution. So far as the regulation of cable television rates is concerned, there does not seem to be any authorization to cities or towns and the Attorney General, in a ruling, has quite clearly stated that even under the Home Rule Amendment, a municipality does not have the right to share in the profits or receipts of a cable television system. In short, the authority of the City Council must be tested against those statutes which have already been enacted and which authorize cities and towns to regulate certain matters affecting the electric utility industry

and the constitutional theory of "residual powers" which may be implied to the municipalities acting under such ordinances properly adopted. Such questions are especially pertinent since the proposed Boston ordinance relies upon a payment by any cable franchisee of 5% of gross receipts as compensation for the franchise. Many of the municipalities which have awarded franchises to cable television operators have the identical 5% of gross receipts clause in their established ordinance.

The distinct possibility that the City of Boston has no essential jurisdiction to regulate cable television raises a very serious question as to whether the public interest is adequately protected if it should adopt any ordinance and then proceed to award franchises pursuant to that ordinance. Under those circumstances, it would only be necessary for the franchisee to refuse to comply with the terms of the ordinance after installing his cables and extending his network of drop-offs to homes and offices throughout the City and proceed to run his business and deliver television signals on the basis most favorable to him and not necessarily to the public at large. For this reason it is absolutely vital that the Corporation Counsel consider the question of jurisdiction thoroughly and report to the City Council his opinion before this or any other ordinance is adopted and before any franchise is awarded by the City of Boston for the installation and operation of a cable television system here. It is recognized that there are enormous pressures upon the City Government to expedite an ordinance and to proceed to issue franchises soon. This is understandable since Boston has been hailed as the fifth largest potential urban market for cable television in the United States. Nevertheless, in the

interest of protecting the public, it seems to us that the City Government must have a clear and unequivocal answer to these questions before it adopts and relies upon a municipal system of regulation.

A case in point is the experience of New York City with a non-franchised cable television operator. This was the Comtel Corporation, which leased the use of the telephone lines and sold its service within the confines of the City, which included areas covered by the two duly franchised cable television operators.

The City of New York took action to restrain the Comtel Corporation. The lower court ruled against the City of New York. The City then appealed the case to the New York Court of Appeals, the highest court in the State, which affirmed the decision of the lower court.

The decision stated that whereas the Comtel Corporation was using existing telephone lines, and had not installed any cable within the City streets, the City of New York did not have the authority to regulate the non-franchised Comtel Corporation.

Before commenting on the proposed ordinance, we would like to offer the opinion that regulation of cable television solely by cities and towns is not going to prove to be a sensible or satisfactory solution to such a potentially important industry with such a high impact upon the public welfare and interest. A staff investigation by the Finance Commission of State regulatory legislation which has been proposed in recent years suggests that at the very least there should be a coherent regulatory approach to cable television in the General Laws of the Commonwealth. Those provisions

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of the General Laws which now regulate the erection of transmission lines and the transmission of electrical, telephone and telegraph signals are simply not adequate for this purpose. It is significant, indeed, in our opinion, that the Judicial Council for the Commonwealth of Massachusetts, in a study conducted pursuant to Chapter 128 of the Resolves of 1968, concluded that the cities and towns of the Commonwealth do not have the technical personnel available to supervise the quality and technical performance of cable television. The Judicial Council concluded with the opinion that proper regulation of cable television can be administered only by an agency or department of the State Government, and that not only is the cable television industry entitled to uniform regulation by such an agency or department but that it have each city or town duplicating the activities of the other cities and towns, neither makes good sense nor does it produce a sensible and coherent regulatory pattern. The Judicial Council recognized, of course, that local officials have considerable expertise with respect to such matters as the laying out of cable television lines and antenna facilities. However, from a financial, rate, service, and performance standpoint, the Judicial Council concluded that State regulation is the only sensible solution. Unless and until the Federal Government takes steps to regulate each of these matters, it seems to us desirable for the General Court to proceed to enact a State-wide regulation and in that connection it is our opinion that the form of regulation suggested by House Bill No. 4387 of 1968 is a reasonable proposal with caveat that it is not entirely clear that the Department of Public Utilities is currently adequately staffed or organized or funded to carry out the regulation of cable television without the assurance of adequate

The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The second part of the report deals with the financial situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The third part of the report deals with the administrative situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The fourth part of the report deals with the educational situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The fifth part of the report deals with the health situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The sixth part of the report deals with the social situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The seventh part of the report deals with the economic situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The eighth part of the report deals with the political situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The ninth part of the report deals with the cultural situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

The tenth part of the report deals with the religious situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have been engaged in the work.

funding and assignments of qualified staff members.

However, it appears inevitable that Federal regulation of cable television will become a reality in the immediate future. If and when it does come, it could be administered by a State or Municipal Agency designated by the Federal Communications Commission.

So far as the proposed ordinance is concerned, we note that, in general, the ordinance now being considered by the City Council Committee on Ordinances in many significant respects resembles the National Institute of Municipal Law Offices (Nimlo) Model Ordinance granting community antenna television franchises. More particularly, it relies upon the granting of a franchise for a defined period of time, upon payment of an initial franchise payment and, in addition, in exchange for payment as compensation for the franchise 5% of gross receipts from basic service to residential subscribers (with an alternative provision for minimum payments whichever is the higher). The statute also provides for basic service rates including installation, monthly rates for television outlets and monthly rates for FM radio service. Similar to the Nimlo Ordinance, the proposed Boston ordinance contains many conditions concerning the installation of coaxial cable in public ways in the City of Boston and, in general, relies upon the system now in effect with respect to electric, telephone and gas companies. It should be observed that the City of Boston experiences considerable difficulty in maintaining its public rights of way in good condition at the present time with the constant openings being made in streets and sidewalks by existing utilities. We can only speculate that this situation may become worse when and if cable television operators begin to develop access to these underground communication channels. The proposed ordinance would also

guarantee that of the 25 or so channels, the City of Boston would have access to a significant number of those channels for public purposes. Such a reservation would seem consistent with the power to grant a franchise provided, however, that the City in fact possesses that power. See Postal Telegraph Cable Company of Massachusetts vs. City of Chicopee. 207 Mass. 341. The ordinance as currently proposed prompts us to ask several questions, namely:

1. We do not see that the ordinance adequately insures that the system will be installed and operating within the limited time frame.
2. We are concerned about whether the City has an adequate guarantee of the character and quality of service and adequate assurances that the grantee of the franchise will provide cable television on the fullest basis possible.
3. We are unable at present to see how the City can specify the authority on which it plans to base the grant of this franchise.
4. It would be hoped that the Public Works Commissioner would have the opportunity to review the provisions of this ordinance and make any suggestions that seem appropriate to him to insure that the City streets and sidewalks will be opened only when absolutely necessary and the surface restored to at least as good a condition as it was in at the time that it was opened.
5. While the term "Board" is used throughout the ordinance, it is not exactly clear what the "Board" is. It is assumed that the City Council intends to establish some form of Community Board represented by persons within the various cable television districts of the City. If this is the case, the ordinance should be reviewed to make sure that the identification and composition of the "Board" is clarified in the text of the ordinance itself.

6. It would appear that the City Council has general supervisory powers over this franchise grant and that the Council may reduce rates for service in the future. We pose the question - exactly how is the City Council going to be able to regulate this franchise having in mind its limited staff and other duties in connection with the operation of City Government. One of the problems faced by cities and towns is a lack of trained supervisory personnel to regulate cable television. We see this lack as being a problem under this ordinance. If local regulation is to be successful under this ordinance, it seems to us that the franchise grantee should be required to pay for the staff and materials necessary to carry out the regulatory scheme.
7. As soon as a grant is issued and the cables have been installed by one cable television operator, it will be extremely difficult for the City to cancel that franchise without having an enormous liability to the franchisee. It is reasonable to expect that cable television operators will ultimately be similar to utility companies for having been granted a monopoly to provide such service for a significant number of years. Consequently, because of such a commitment and the enormous investments required for equipment and service, that as a practical matter, the City will be unable in future years to dislodge the franchise and grant it to another.
8. The ordinance is vague as to how the franchise operator is to be selected. It seems to us, at the very least, that before the issuance of any franchise there should be a public hearing with extensive notices and publications made and that the franchise operator should only be selected after a thorough examination of his professional and financial background and competence.

There are doubtless other matters that have occurred to the Members of the City Council during the hearings that were recently conducted by its Committee on Ordinances. Also, helpful suggestions may have been made by others having familiarity with cable television

The first of these is the fact that the
population of the country has increased
very rapidly since the year 1850. This
has been due to a number of causes,
but the most important of them is the
fact that the country has been opened
up to settlement. The land is now
available for cultivation, and the
people are flocking to it in great
numbers. This has led to a great
increase in the number of people who
are engaged in agriculture, and this
in turn has led to a great increase in
the production of food and other
necessaries of life. This has led to a
great increase in the standard of
living, and this is one of the main
causes of the rapid increase in the
population of the country.

The second of these causes is the fact
that the country has been opened up to
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experience in other municipalities. In the interest of furnishing our views to the City Council at the earliest possible moment, we have not attempted to consider all possible factors involved. We have selected those issues which strike us as being most significant and timely for the City Council to resolve at this moment. Unless and until these questions can be resolved to the satisfaction of the Corporation Counsel and to the Members of the City Council, we respectfully suggest that no further action be taken under this proposed ordinance and under no circumstances should any franchise be issued. Furthermore, we would very much hope that the Members of the City Council and, perhaps, the Mayor would join us in respectfully suggesting to the General Court that a coherent and comprehensive State regulation be drafted on the subject of cable television in the absence of any Federal regulation at the present time. Only when such a statute has been enacted, or when Federal regulation has become a reality, can the public be assured that this industry will indeed operate in accordance with the public interest and it is the responsibility of both to see to it that the public interest is protected in a matter of such importance and public impact.

Respectfully submitted,

Lawrence T. Perera, Chairman,
THE FINANCE COMMISSION.

